THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.11927 of 2003

DATE: 13.09.2007

Between:

Smt. Konda Sundaramma

.....PETITIONER(S)

A N D

1. The State of A.P. represented by Principal Secretary, Home Department, Secretariat, Hyderabad and others.

.....RESPONDENT(S)

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.11927 of 2003

ORDER:

This petition is filed seeking a direction to the 1st respondent (The State of A.P. represented by Principal Secretary, Home Department, Secretariat, Hyderabad) to cause enquiry into the cause of death of Konda Deva Karuna Rao (hereinafter referred to as 'the deceased') by an independent investigation agency such as C.B.C.I.D. or C.B.I.

2. The petitioner, who is the mother of the deceased, in her affidavit filed in support of the petition alleged that Konda Kiran Kumar and his mother Kalavathi and the parents of Kalavathi, with an intention to grab the properties of the deceased, murdered the deceased and though she submitted several petitions to several authorities informing that Kiran Kumar, in fact, is not the son of the deceased, and as the deceased died intestate, Kiran Kumar is not entitled to any of the properties of the deceased, the police, who are not properly investigating into the case and did not seize the relevant material relating to the murder, are trying to help Kiran Kumar and so they failed to produce the four feet stick seized by the Sub-Inspector of Police from the scene of offence before the Court and as she was living at Ambapuram with her second son due to fear of Kiran Kumar, she could not act promptly in reporting about the murder of the deceased and as all the efforts made by

her to get the case relating to the murder of the deceased investigated in proper lines proved futile, she was obliged to file this petition.

3. On 27.06.2003, 4th respondent filed his counter affidavit on behalf of the respondents *inter alia* contenting that a case in Crime No.117 of 2001 was registered under Section 174 Cr.P.C. in connection with the death of the deceased and 7 witnesses were examined, and as no Sub-Inspector of Police was posted at Vemuru Police Station from 16.6.2003, and as he is acting as in-charge of the said police station, he is not proceeding with the further investigation and the regular Sub-Inspector of Police to be posted in the police station would take up further investigation. In view of the disputes between her and Kiran Kumar, petitioner is sending several petitions against the police to various authorities with false allegations.

4. Petitioner filed her reply affidavit on 30.7.2003 *inter alia* contending that though she sent a complaint dated 28.01.2002 to the Superintendent of Police, Guntur District (3rd respondent), no case under the relevant Sections was registered and that she gave another complaint to the Sub-Inspector of Police, Vemuru Police Station, on 16.3.2002 relating to the looting of the property but the police did not register a case or take any action thereon, and that Kiran Kumar falsely claiming to be the son of Dr.V.Kamalamma, and the deceased obtained a legal heir certificate to grab the properties of the deceased and though she sent several representations to the Chief Justice of this Court and State Legal Cell Authority no action was taken thereon, and the case is not being investigated into to find out whether the deceased was

actually murdered or not by the respondents and so the case may be handed over to any other authority for investigation.

5. Alleging that he is the tenant of the petitioner and that several civil cases are pending between him and the petitioner with regard to the properties after the death of the deceased, 5th respondent filed WPMP No.10076 of 2005 to bring himself on record as a party to the petition, which was allowed by a learned Judge on 07.04.2005.

6. Heard the learned counsel for petitioner and the Government Pleader for respondents and the 5th respondent who is appearing party-in-person.

7. The contention of the learned counsel for petitioner is that since respondents are not taking proper interest in investigation the case in proper lines due to the influence brought on them by Kiran Kumar, and are not even considering the several representations sent by the petitioner, petitioner is apprehending that the respondents would not investigate into the case properly and so in the interest of justice the investigation relating to the death of the deceased may be handed over to C.B.I. or C.B.C.I.D. It is his contention that in the representations made by the petitioner and her son, they clearly alleged that the investigating officer is not taking interest and did not produce the material objects seized from the scene of offence and that fact itself establish the partisan attitude of the investigating officer. The contention of the learned Government Pleader for Home is that immediately after the deceased was admitted in the hospital, a Magistrate recorded his dying declaration where the deceased

stated that he sustained burns accidentally and the record maintained in the hospital shows that the death of the deceased was accidental but not homicidal and so there is no *prima facie* reason to believe that the death of the deceased was homicidal. The contention of the 5th respondent is as the deceased who was his landlord was brutally murdered, and several persons witnessed that incident and are ready to given evidence but as the police are not taking interest, and are acting in collusion with Kiran Kumar, who is claiming to be the son of the deceased, though, in fact, he is not the son of the deceased and as he is being harassed and threatened by Kiran Kumar, he is obliged to file a petition to come on record as 5th respondent in this case to assist the Court in coming to a correct conclusion, and since the investigation by an independent agency only would reveal the real facts, and since Courts cannot act on mere technicalities, the investigation of the case relating to the death of the deceased may be handed over to an independent agency in the interest of justice.

8. I have gone through the case file produced by the Government Pleader. It shows that the Sub-Divisional Police Officer, Guntur, submitted a report to the Inspector General of Police, Guntur Range, Guntur, in his N.R.C.No.99/SDPO-TNL/04 dated 08.01.2005 informing that on 12.12.2001 Crime No.117 of 2001 of Vemuru Police Station was registered on the basis of the statement given by the deceased that he had gone to sleep on 11.12.2001 after lighting of mosquito coil and that the mattress caught fire and was burnt at about 1 AM accidentally and when he raised cries, his brother Aseervadam put off the flames and shifted him to Government Hospital, Tenali, and that he is not suspecting any foul play by others and that the Sub-Inspector of Police,

Vemuru Police Station, visited the scene of offence and prepared a panchanama of the scene of offence in the presence of mediators and recorded statements of 7 witnesses including the brother of the deceased and the immediate neighbours, and that those people also did not suspect any foul play regarding the burns received by the deceased, and that the II Additional Munsif-Magistrate, Tenali, recorded the dying declaration of the deceased on 12.12.2001 wherein the deceased stated that he received the burns due to the electrical short circuit and that none are responsible for the same, and though there is a discrepancy regarding the cause of flames, since the deceased did not suspect anybody for his receiving the burn injuries, none can be said to be responsible for the burn injuries received by the deceased, and that the deceased was shifted to St.Joseph Hospital, Guntur, from Government Hospital and that Konda Kiran Kumar shifted the deceased to Apollo Hospital, Hyderabad, from St.Joseph Hospital, Guntur, on 13.12.2001, where deceased succumbed to the burn injuries on 15.12.2001 at

1 PM in the Apollo Hospital, Hyderabad, and that Crime

No.660 of 2001 registered on the basis of the report given by Konda Kiran Kumar on 15.12.2001, under Section 174 Cr.P.C. by the Banjara Hills Police Station, Hyderabad, was transferred to Vemuru Police Station on the point of jurisdiction and was re-registered as Crime No.117 of 2001 altering the Section of Law, and as none of the witnesses suspected foul play regarding the cause of the death of the deceased, and as the dying declaration recorded by the II Additional Munsif-Magistrate, Tenali, on 12.12.2001, shows that the deceased received the burns accidentally and since the post mortem examination report

conducted by Dr.A.Shankar Rao, the Assistant Professor, Forensic Medicine, Osmania Medical College, Hyderabad, shows that the deceased appeared to have died due to shock consequent of burns and since the disputes between the petitioner and others seem to be of civil nature and as the allegations made in the petition are all exaggerations, no further action is being taken in the crime already registered.

9. The learned counsel for petitioner relying on the representation dated 28.01.2002 of Konda Jermaiah and Konda Vara Prasad Rao, brothers of the deceased, and the complaint submitted by the petitioner, contended that though the complaint submitted by the petitioner and the representation of the brother of the deceased clearly shows that there are eye witnesses to the incident of the murder of the deceased and the police are not taking interest and are not investigating into the offence properly and so a direction to conduct proper investigation may be given.

10. Since the representation dated 28.01.2002 of the brother of the deceased which is enclosed to the reply affidavit, shows that Konda Jermaiah claimed himself to be a resident of Dornakal, and Konda Vara Prasada Rao claimed himself to be a resident of Vijayawada, it is *prima facie* clear that they were not residing at Guntur, where the incident of the deceased receiving burns took place. So, they obviously were not the eye-witnesses to the incident in which the deceased received burn injuries. If the two brothers of the deceased felt that there were eye-witnesses to the incident and the investigation is not properly being done, their remedy is to file a private complaint against those alleged assailants of the deceased but cannot blame the respondents,

because the counter affidavit filed on behalf of the respondent and the case file produced before me show that the investigating officer examined Aseervadam, the brother of the deceased, who resides near the house of the deceased. His statement does not disclose any foul play by anybody, for the burn injuries suffered by the deceased.

11. The report of the Sub-Divisional Police Officer referred to above clearly shows that there are disputes between the petitioner and Kiran Kumar, a person claiming to be the son of the deceased. Question whether Kiran Kumar is the son of the deceased or not is beyond the scope of the investigation, because the investigation is not regarding the legitimacy or otherwise of Kiran Kumar but is with regard to the facts leading to the death of the deceased. So, if the petitioner has any grievance about the legal heir certificate obtained by Kiran Kumar and his right to succession over the properties of the deceased, her remedy is elsewhere but she cannot by way of this petition seek enquiry into the legal heir certificate issued to Kiran Kumar.

12. There is no *prima facie* material on record to show that the investigation is not being done properly by respondents 2 to 4. The assumption on the part of the petitioner that no dying declaration was recorded cannot be accepted because the report of the Sub-Divisional Police Officer clearly shows that the II Additional Munsif-Magistrate, Tenali, recorded the dying declaration of the deceased who stated that he received the burn injuries accidentally. Therefore, *prima facie* there is no material to show that there was a homicidal death.

13. The 5th respondent who has no *locus standi* to appear in this

petition stated that Kiran Kumar, though not related to the deceased, is acting in a high-handed fashion. If the 5th respondent has any grievance against Kiran Kumar, who is claiming to be the son of the deceased, his remedy is elsewhere, but he, in this petition filed by the petitioner seeking a direction to get the case relating to the death of the deceased investigated with an independent agency, can have no say. Therefore, I need not refer to or advert to the several contentions raised by the 5th respondent appearing in person.

14. Since there is nothing on record to show that the police are acting prejudicially to the interest of the petitioner and since even the son of the petitioner, Konda Karuna Rao, and the brother of the petitioner by name Aseervadam, did not support the case of the petitioner, I find no grounds to entrust the case to any other agency, other than the regular police for investigation.

15. Therefore, the petition is dismissed with costs. Advocate fee is fixed at Rs.500/-.

13.09.2007

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